Supreme Ct.
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In The
Supreme Court of the United States

PRISCILLA EVERETTE-OATES,
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF MAGGIE OATES
Petitioner,

v.

JO ANNE B. BARNHART, COMMISSIONER OF
SOCIAL SECURITY
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The general procedure of a Social Security disability inquiry is well established. Five questions are to be asked sequentially during the course of a disability determination. §§ 20 C.F.R. 404.1520, 1520a (1988). An Administrative Law Judge must consider (1) whether the claimant is engaged in substantial gainful activity, (2) whether the claimant has a severe impairment, (3) whether the claimant has an impairment that meets or equals a condition contained within the Social Security Administration's official list of impairments, (4) whether the claimant has an impairment which prevents past relevant work, and (5) whether the claimant's impairment prevents the performance of any substantial gainful employment. An ALJ's factual determinations must be upheld if supported by substantial evidence, *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986).

The ALJ has a duty to weigh and address all the competent evidence in the record, which bears on the outcome. In the course of this analysis, "[t]he ALJ has a duty to explore all relevant facts and inquire into the issues necessary for adequate development of the record, and cannot rely only on the evidence submitted by the claimant when that evidence is inadequate." *Cook v. Heckler, 783* F.2d 1168, 1173 (4th Cir. *1986).* The Secretary must analyze all relevant evidence and state the weight afforded to the evidence before denying a claim for benefits. *Gordon v. Schweiker, 725* F.2d 231, *236* (4th Cir. 1984).

The Social Security Regulations likewise require a careful examination of all relevant evidence in the record. *20* C.F.R. § 404.1527(d)(2). Social Security Ruling 96-8p requires a "thorough discussion and analysis of the objective medical and other evidence."

Despite deficiencies in the record that met the criteria for mental retardation, the ALJ did not consider these deficiencies when determining that Maggie Everette did not meet or equal a listing in the Listings of Impairments in step 3 of the evaluation process. The ALJ failed to analyze Maggie Everette's mental impairments under the categories supported by the clinical findings.

In addition to failing to properly review Everette's mental impairments the ALJ failed to properly categorize the severe physical impairments they did find. The ALJ in reviewing Everette's claim found that Everette suffered from severe medical impairments that limited Everette to light work. This finding was more than the minimal finding necessary to support a finding that Everette was disabled and entitled to disability compensation under the Social Security Act. This case presents the following questions:

1. DID THE ALJ ERR IN FINDING MAGGIE EVERETTE SEVERE MEDICALLY DETERMINABLE IMPAIRMENTS DID NOT MEET OR MEDICALLY EQUAL ONE OF THE LISTED IMPAIRMENTS IN APPENDIX I, SUBPART P, REGULATION NO. 4.

2. DID THE ALJ ERR BY FAILING TO ADDRESS IMPORTANT MEDICAL EVIDENCE IN THE RECORD WHICH TENDS TO PROVE THAT MAGGIE EVERETTE MEETS OR EQUALS LISTING 12.05 (C) PRIOR TO SEPTEMBER 1, 1987.

3. DID THE LOWER COURT ERR IN AFFIRMING THE ALJ DECISIONS.

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PETITION FOR WRIT OF CERTIORARI

Priscilla Everette-Oates, as personal representative for the estate of Maggie Oates, proceeding *pro se* respectfully petitions for a writ of certiorari to review the findings of the Administrative Law Judges and the decisions of the lower courts upholding said findings.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fourth Circuit is cited as Priscilla Everette v. Jo Anne B. Barnhart, No. 04-2422 (4th Cir. 2005). The opinion of the District Court is unpublished and cited as Everette v. Barnhart, No. CA-02-48-H (E.D.N.C. Sept. 8, 2004).

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on May 13, 2005. Petitioner filed a timely motion for rehearing, which was denied by an order filed August 9, 2005. The jurisdiction of this Court is invoked under Section *205(g)* of the Social Security Act, as amended, 42 U.S.C. § 405(g), and Section 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C. §1383(c)(3), and 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. §405(g) provides, in relevant part:

(g) Judicial review

...As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive...

App. at 40-41.

20 C.F.R. §404.1520 and 1520(a)(1988) provide in relevant part:

§ 404.1520 Evaluation of disability in general.

(a) Steps in evaluating disability. We consider all evidence in your case record when we make a determination or decision whether you are disabled. When you file a claim for a period of disability and/or disability insurance benefits or for child's benefits based on disability, we use the following evaluation process. If you are doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider the effect of your physical or mental impairment; if you have more than one impairment, we will also consider the combined effect of your impairments.

App. at 41-42.

20 C.F.R. §404.1527(d)(2) provides in relevant part:

(d) How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight

under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

(1) Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

(2) Treatment relationship.

App. at 42-43.

20 C.F.R., Part 404, Subpart P, App. 1, §12.00(A)

12.00 Mental Disorders

A. Introduction. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on your ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months.

App. at 43-46.

STATEMENT OF THE CASE

The procedural record is poorly documented because the original record upon which it is based could not be located by the Appeals Council. The information in the reconstructed record indicates that Ms. Maggie Everette, now deceased who's estate is represented by daughter Priscilla Everette-Oates (hereinafter, Petitioner), filed an application for a Period of Disability and Disability Insurance benefits on January 10, 1983. Petitioner applied for Disabled Widow's Insurance benefits on January 24,

1983 and Supplemental Security Income on April 1, 1983, alleging commencement of disability in January 1978. After a hearing before an Administrative Law Judge, a decision was issued on September 28, 1983 finding Petitioner was not disabled as defined by the Rules in the Social Security Act. The Appeals Council denied Petitioner's request for review on November 28, 1983. Petitioner then filed a request to be included in the Hyatt class. The Appeals Council remanded the case to an Administrative Law Judge for a new hearing and decision in accordance with the Order issued in the case of Hyatt v. Heckler. A hearing was held before an Administrative Law Judge and a decision dated June 29, 1987 was issued finding that Petitioner was not disabled. Petitioner applied again for a period of disability, Disability Insurance Benefits and Supplemental Security Income on September 9, 1987, alleging an onset of disability of October 15, 1975. Plaintiff was found disabled but was only eligible for Supplemental Security Income as of September 1, 1987.

Petitioner was determined in April 1989 to be a member of the *Hyatt v. Bowen* class and subsequently requested a review of her 1983 applications. An Administrative Law Judge determined that Plaintiff was not properly determined to be a member of the *Hyatt III* class (*Hyatt v. Shalala*). Upon remand by the Appeals Council, a hearing was held before Administrative Law Judge Stephen Jones, who issued a decision dated December 27, 2000 finding Petitioner was not disabled. The Appeals Council denied Petitioner's request to review the decision by ALJ Jones, making the ALJ's decision the

final administrative decision of the Social Security Administration and exhausting all of Petitioner's administrative remedies.

STANDARD OF REVIEW

In reviewing a final decision of no disability by the Commissioner, the *Court* must determine whether the Commissioner's decision is supported by substantial evidence, per 42 U.S.C. § 405(g), and whether the ultimate conclusions reached by the Commissioner are legally correct under controlling law. *Richardson v. Perales, 402* U.S. 389, 390, 401, 91 S.Ct. 420, 422, 427 (1971); *Hayes v. Sullivan,* 907 F.2d *1453,* (4th Cir. 1990).

The phrase "supported by substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Smith v. Chater, 99* F.3d 635, 638 (4th Cir. 1996). Elaborating on this definition, the Fourth Circuit has stated that the phrase "supported by substantial evidence" consists of evidence "of more than a scintilla of evidence, but may be somewhat less than a preponderance." *Hayes,* 907 F.2d at 1456 {quoting *Laws v. Celebrezze, 368* F.2d 640, 642 (4th Cir. 1996)}.

Moreover, the *Court* should closely scrutinize administrative proceedings in order to insure results consistent with congressional intent and elemental fairness. *Flack v. Cohen,* 413 F.2d 278 (4th Cir. 1972). Further, the conclusions of law of the Commissioner are not entitled to a presumption that they are correct. *Cunningham v. Harris, 658* F.2d 239 (4th Cir. 1981). Most importantly,

factual findings by and Administrative Law Judge are not binding if reached through the use of some improper standard or misapplication of law. *Coffman v. Bowen*, 820 F.2d 514 (4th Cir. 1987).

ISSUES PRESENTED

I. THE ALJ ERRED IN FINDING PETITIONER'S SEVERE MEDICALLY DETERMINABLE IMPAIRMENTS DID NOT MEET OR MEDICALLY EQUAL ONE OF THE LISTED IMPAIRMENTS IN APPENDIX I, SUBPART P, REGULATION NO. 4.

A. THE ALJ ERRED BY FAILING TO ADDRESS LMTORTANT MEDICAL EVIDENCE IN THE RECORD WHICH TENDS TO PROVE THAT PLALN'111-F MEETS OR EQUALS LISTING 12.05 (C) PRIOR TO SEPTEMBER 1, 1987,

STATEMENT OF THE FACTS

Petitioner was born on May 10, 1926. The reconstructed record contains evidence indicating that prior to September 1, 1997, Petitioner had severe medically determinable impairments including status post lumbar laminectomy with residual pain, hypertension and diabetes mellitus. In his decision dated December 27, 2000, ALJ Stephen Jones determined that between October 15, 1975 and September 1, 1987, Petitioner had the residual